COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

A Tradition of Service

DATE: October 4, 2010

OFFICE CORRESPONDENCE FILE NO. FO2255900

FROM: ERIC B. SMITH, COMMANDER
LEADERSHIP AND TRAINING DIVISION

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE DISPOSITION:**
DEPUTY OSCAR S. BARRIOS #[redacted]
CENTURY STATION

At approximately 2015 hours, Deputies Oscar Barrios and [redacted] Unit 216D, were called to a location regarding a male (later identified as Suspect Berry) who claimed to be suicidal and had threatened to kill his [redacted] and her [redacted] with a knife. When the deputies arrived, Suspect Berry challenged them to kill him.

Suspect Berry, who was possibly still armed with the knife, attacked Deputy Barrios. Deputy Barrios side-stepped and was struck in the shoulder by Suspect Berry. Deputy Barrios struck the suspect several times in the left shoulder with his flashlight and several more times on his left lower arm. Berry fell to the ground with his left arm beneath his torso.

Deputy [redacted] was able to hold Berry's right arm, but Barrios was not able to remove the suspect's left arm from beneath his body. Fearing he might be trying to arm himself, Barrios sprayed the suspect's face with OC spray. The OC spray had a desirable effect and handcuffed Suspect Berry without further incident.

The knife that Berry had used while issuing his threats was recovered from inside the suspect's residence.

Suspect Berry was treated at Harbor UCLA Medical Center for a fractured forearm. He was also held for a 72 hour mental evaluation under Welfare and Institution code 5150.

On September 9, 2010 the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: MPP §§ 3-01/025.00, Use of Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards.

Concerning:

MPP § 3-01/025.00, Use of Force, and MPP § 3-01/025.10, Unreasonable Force, the Committee determined that the force used by Deputy Oscar S. Barrios #[redacted] was reasonable and necessary and in compliance with Department policy.

MPP § 3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by Deputy Oscar S. Barrios #[redacted] in this incident were within Department Policy.

Eric B. Smith, Commander

EBS:RSP/rsp

Table of Contents

IAB # FO2255900

- Suspect Interview (Watch Commander)

MISCELLANEOUS DOCUMENTS

- Century Station In-Service, PM Shift, November 26, 2009
- Unit History Report - 216D, 11/26/09
- Incident History Report - Tag 219, 11/26/09
- Witness Administrative Rights Forms
- Consolidated Criminal History Report - Suspect

Los Angeles County Sheriff's Department

Supervisor's Report on Use of Force

Incident Information

URN: 509-228976-2142-145	Date: 11/26/09	Time: 2015 hrs.	
Location: [redacted] East 135th Street, Los Angeles	City or Station: Los Angeles		
Bureau/Station/Facility: Century Station	Admin. Investigation: YES ☐ NO ☒		
Type of Force: Impact Weapon (Flashlight) / O.C. Spray			
Deputy Injury : YES ☐ NO ☒	Suspect Injury YES ☒ NO ☐		
☒ Call	☐ Observation	☐ Detail	☐ Foot Pursuit ☐ Vehicle Pursuit
IAB Notified: YES ☒ NO ☐	Person Notified: Lt. Curtis Jensen	Emp: [redacted]	IAB Roll Out: YES ☐ NO ☒

Involved Employee

E 1

Employee # [redacted]	Last Name: Barrios	First Name: Oscar	Middle Name: S.
Sex: ☒ Male ☐ Female	Race: Hispanic	Unit of Assignment: Century Station	Work Assignment (Unit #, Module, etc.): Patrol/216D
Shift: ☐ EM ☐ Day ☒ PM	☒ Regular Shift ☐ OT Shift ☐ Off Duty	Age: [redacted]	Height: 6'01" Weight: 185 lbs
☐ Injured ☐ Treated ☐ Admitted	Hospital:	Coroner Case #	Directed Force ☐ Significant Force ☒

E 2

Employee # [redacted]	Last Name: [redacted]	First Name: [redacted]	Middle Name
Sex: ☐ Male ☒ Female	Race: Hispanic	Unit of Assignment: Century Station	Work Assignment (Unit #, Module, etc.): Patrol/216D
Shift: ☐ EM ☐ Day ☒ PM	☒ Regular Shift ☐ OT Shift ☐ Off Duty	Age: [redacted]	Height: 5'05" Weight: 120 lbs
☐ Injured ☐ Treated ☐ Admitted	Hospital:	Coroner Case #	Directed Force ☐ Significant Force ☐

E_

Employee #	Last Name	First Name	Middle Name
Sex: ☐ Male ☐ Female	Race: Hispanic	Unit of Assignment: Carson Station	Work Assignment (Unit #, Module, etc.):
Shift: ☐ EM ☐ Day ☐ PM	☐ Regular Shift ☐ OT Shift ☐ Off Duty	Age:	Height: Weight:
☐ Injured ☐ Treated ☐ Admitted	Hospital:	Coroner Case #	Directed Force ☐ Significant Force ☐

☐ Additional Involved Employees

On Duty Supervisor

Emp. #	Last Name	First Name	Middle Name	Rank	Present	Witness to Incident
[redacted]	Mitchell	Willette		Sgt	YES ☐ NO ☒	YES ☐ NO ☒
					YES ☐ NO ☐	YES ☐ NO ☐

Watch Sergeant

Emp. #	Last Name	First Name	Middle Name
[redacted]	Reid	Thomas	P.

Watch Commander

Emp. #	Last Name	First Name	Middle Name
[redacted]	Duffy	Vance	E.

Watch Commander (**Print Name**) | Watch Commander's **Signature**: | Emp #: | Date

Sergeant. Eric Strong [redacted]

Supervisor Completing Form: (**Print Name**) | Emp #: | Copy Provided to Employee by: | Emp #:

Captain James J. Hellmold

Unit Commander (**Print Name**) | Unit Commander's **Signature**: | Emp #: | Date

DISCOVERY Use Only

FO#

Hybrid Form SH-R-438P (Rev. 11/07)

Original: Discovery Unit
Copy: Unit Commander

Supervisor's Report on Use of Force
SUSPECT INFORMATION
5 0 9 - 2 2 8 9 7 - 2 1 4 2 - 1 4 5

Suspect Information

S 1

Last Name: Berry | First Name: Wesley | Middle Name:

AKA Last Name: Cabrales | First Name: Wesley | Middle Name:

Sex: [X] Male [ ] Female | Race: White | Street Address: [redacted] | City: [redacted] | State & Zip Code: [redacted]

Work Phone: [redacted] | Home Phone: [redacted] | Age: 45 | Height: 5'03" | D.O.B. 08/05/64 | Weight: 140 LBS | Armed? [ ]

Booking #: 2143689 | Primary Charge Code: 422 PC | Secondary Charge Code: 245(a)(1) PC | Criminal History [redacted]

EMT in attendance? [X] YES [ ] NO Name: Los Angeles County Fire | Unit: 95 | Phone #: 323-586-7049

Hospital Admission? [X] | Rec'd Treatment At: Harbor UCLA Medical Center | Coroner Case #: | Mental History [X]

By Doctor: Hathuc | Address: 1000 W. Carson Blvd, Torrance, Ca 90509 | Phone #: 310-222-2757

Under Influence: [ ] YES [X] NO | Substance: | Mental Illness [X]

Suspect Interview

Date: 11/27/09 | Time: 0405 | Audiotape: [ ] | Videotape: [X] | Photos of Injuries: [ ]

Suspect Information

S__

Last Name: | First Name: | Middle Name:

AKA Last Name: | First Name: | Middle Name:

Sex: [ ] Male [ ] Female | Race: | Street Address: | City: | State & Zip Code:

Work Phone: | Home Phone: | Age: | Height: | D.O.B. | Weight: | Armed? [ ]

Booking #: | Primary Charge Code: | Secondary Charge Code: | Criminal History [ ]

EMT in attendance? [ ] YES [ ] NO Name: | Unit: | Phone #:

Hospital Admission? [ ] | Rec'd Treatment At: | Coroner Case #: | Mental History [ ]

By Doctor: | Address: | Phone #:

Under Influence: [ ] YES [ ] NO | Substance: | Mental Illness: [ ]

Suspect Interview

Date: | Time: | Audiotape: [ ] | Videotape: [ ] | Photos of Injuries: [ ]

Suspect Information

S__

Last Name: | First Name: | Middle Name:

AKA Last Name: | First Name: | Middle Name:

Sex: [ ] Male [ ] Female | Race: | Street Address: | City: | State & Zip Code:

Work Phone: | Home Phone: | Age: | Height: | D.O.B. | Weight: | Armed? [ ]

Booking #: | Primary Charge Code: | Secondary Charge Code: | Criminal History [ ]

EMT in attendance? [ ] YES [ ] NO Name: | Unit: | Phone #:

Hospital Admission? [ ] | Rec'd Treatment At: | Coroner Case #: | Mental History [ ]

By Doctor: | Address: | Phone #:

Under Influence: [ ] YES [ ] NO | Substance: | Mental Illness [ ]

Suspect Interview

Date: | Time: | Audiotape: [ ] | Videotape: [ ] | Photos of Injuries: [ ]

[ ] **Additional Suspects Involved**

Supervisor's Report on Use of Force
EMPLOYEE / NON-EMPLOYEE INFORMATION
5 0 9 - 2 2 8 9 7 - 2 1 4 2 - 1 4 5

Employee Witnesses

Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name
Emp. #	Last Name	First Name	Middle Name

Non-Employee Witnesses

Last Name [redacted]	First Name [redacted]	Middle Name [redacted]	Age [redacted]	D.O.B. [redacted]
Street Address [redacted]	City [redacted]	Zip Code [redacted]	Work Ph. [redacted]	Home Ph. [redacted]
Last Name [redacted]	First Name [redacted]	Middle Name [redacted]	Age	D.O.B. [redacted]
Street Address [redacted]	City [redacted]	Zip Code	Work Ph. [redacted]	Home Ph. [redacted]
Last Name [redacted]	First Name [redacted]	Middle Name [redacted]	Age [redacted]	D.O.B. [redacted]
Street Address [redacted]	City [redacted]	Zip Code [redacted]	Work Ph. [redacted]	Home Ph. [redacted]
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.
Last Name	First Name	Middle Name	Age	D.O.B.
Street Address	City	Zip Code	Work Ph.	Home Ph.

☐ Additional Witness

Method

(AW) Arwen
(BC) Baton: (Control)
(BI) Baton: (Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds: (Control Techniques)
(TT) Control Holds: (Team Takedown)
(TD) Control Holds: (Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device: Hobble (Legs Only)
(TP) Restraint Device: Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hands
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(NO) Nose
(SH) Shoulder
(WR) Wrist

FORCE USED BY		FORCE USED AGAINST		Method (Code)	Type of Injury (Code)	Body Part (Code)
Name	E# or S#	Name	E# or S#			
Berry, Wesley	S#1	Barrios, Oscar	E#1	UC/PH/RS	NN	NN
Berry, Wesley	S#1	[redacted]	E#2	UC/RS	NN	NN
Barrios, Oscar	E#1	Berry, Wesley	S#1	FL/OC	FR	AR
[redacted]	E#2	Berry, Wesley	S#1	CT/RH	FR	AR

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

INVESTIGATIVE SUMMARY
SIGNIFICANT USE OF FORCE

UNIT:	**Century Station**
DATE:	November 26, 2009 (Thursday)
TIME:	2015 hours
LOCATION:	[redacted] East 135th Street, Los Angeles 90059
URN#:	509-22897-2142-145
IAB#:	FO2255900

On April 28, 2009, (Saturday) the Internal Affairs Bureau (IAB) Force and Shooting Response Team Lieutenant, received notification of a suspect that suffered a fractured arm as a result of force used by deputies. The suspect had been transported to the hospital after the use of force and his injury had not been determined at the time. The suspect was placed under a 72 hour mental evaluation. When the mental evaluation was completed and Century Station was notified that the suspect was to be released for booking, station personnel found out that the suspect had a fractured forearm. Due to the delayed notification a Force and Shooting Response Team did not respond to the location at the time of the incident.

This investigation is based on statements by the involved deputies, witnesses, and suspect, information obtained during the investigation, and various written documentation.

SYNOPSIS:
At approximately 2015 hours on November 26, 2009, Century Deputies Oscar Barrios and [redacted] were working uniformed patrol as Unit 216D when they were called to the incident location regarding a male (later identified as Suspect Berry) who claimed to be suicidal and who had threatened to kill his [redacted] and her [redacted] with a knife. Suspect Berry--who had been drinking alcohol and was believed by [redacted] to have mental problems--attempted to leave the location when the deputies arrived, and challenged them to kill him when they attempted to detain him.

Suspect Berry, who was believed to possibly still be armed with the knife in his jacket pocket, attacked Deputy Barrios and punched several times at his facial area. Deputy Barrios side-stepped and was struck in the shoulder by Suspect Berry. Barrios defended himself by striking the suspect several times in the left shoulder area with his flashlight. Barrios' efforts did not stop the attack, so he struck Berry several more times

about his left lower arm from the elbow to the wrist. Berry fell to the ground with his left arm beneath his torso.

Deputy [redacted] was able to secure a hold on Berry's right arm, but Barrios was not able to remove the suspect's left arm from beneath his body. Fearing he might still be trying to arm himself, Barrios sprayed the suspect in the face with OC spray. The OC spray had a desirable effect, and Barrios succeeded in removing the suspect's left arm from beneath his body. The deputies handcuffed Berry without further incident. The knife that Berry had used while issuing his threats was recovered from inside the suspect's residence.

INVOLVED PERSONNEL AND EMPLOYEE WORK HISTORY:

Barrios, Oscar #[redacted]

Date of Employment	08/04/04
Date assigned to Patrol	[redacted]
Completed Patrol Training	[redacted]
Prior Shooting Incident(s)	[redacted]
Prior Founded Force Incidents	[redacted]

[redacted] #[redacted]

Date of Employment	02-10-03
Date assigned to Patrol	[redacted]
Completed Patrol Training	[redacted]
Prior Shooting Incident(s)	[redacted]
Prior Founded Force Incidents	[redacted]

SUSPECT:

Berry, Wesley Male/White, 5'03", 140 lbs., Black/Brown, DOB: 08-05-64
[redacted] Phone: [redacted]

Suspect Berry has [redacted]

CIVILIAN WITNESSES:

Witness [redacted] was present during this incident and gave a video-taped interview to the field sergeant on the night of the incident. Witness [redacted] participated in a telephonic interview with the IAB Investigator and gave a recorded statement. This is a summary of Witness [redacted] statement. For her complete statement refer to the verbatim transcript, audio file and video included in this investigation.

Witness [redacted] was standing across the street from her residence when Suspect Berry exited the location and made contact with the deputies. (At the time of the incident, Suspect Berry and Victim [redacted]

Witness [redacted] said Suspect Berry exited the residence, locked the door and as he turned toward the street he put his hands in his pocket. The deputies were standing outside the location and told Suspect Berry to take his hands out of his pocket. The suspect did not comply and started running eastbound on 135th Street towards McKinley Avenue. Witness [redacted] said the male deputy (Deputy Barrios) began chasing Suspect Berry and the female deputy [redacted] watched to see what direction they were going. Deputy [redacted] then got into their patrol vehicle and began driving in the direction of Suspect Berry and Deputy Barrios.

After running approximately half the length of a football field, Suspect Wesley turned around and ran westbound, going around the patrol car. Deputy Barrios continued to chase the suspect as he ran westbound to the corner of 135th Street and McKinley Avenue. Suspect Berry stopped running and turned to face Deputy Barrios who had caught up with the suspect. Witness [redacted] saw Deputy Barrios grab the suspect from the front and pull him to the ground. Suspect Berry landed on his stomach and Witness [redacted] could not see the suspect's hands. Witness [redacted] saw Deputy Barrios use his flashlight and strike Suspect Berry two times in the shoulder and back area. She stated she then turned her head so as not to see. She could hear the struggle as it continued and heard what she said were additional strikes with the flashlight.

Witness [redacted] said when she looked again, Deputy [redacted] had exited the patrol vehicle, placed her knee on Suspect Wesley's back, and handcuffed him. Witness [redacted] said she thinks that Deputy [redacted] sprayed Suspect Berry with OC Spray.

Witness [redacted] said she feels the deputies acted appropriately based on the circumstances of the situation. She added that Suspect Berry drinks and had been drinking that day.

Witness [redacted] was present during this incident and gave a video-taped interview to the field sergeant on the night of the incident. This is a summary of Witness [redacted] statement. For her complete statement refer to the video included in this investigation. IAB Investigators attempted, unsuccessfully, to contact Witness [redacted]

Witness [redacted] went to Suspect Berry's residence with her [redacted] Witness [redacted] Witness [redacted] said that she is aware of Suspect Berry and stated that he is violent and "likes to use knives." Witness [redacted] said she was standing outside of Suspect Berry's residence when the police arrived and she told them the suspect had a knife and had threatened to stab Witness [redacted]

Witness [redacted] saw Suspect Berry exit the front door of his residence with a bag and the deputies told him to lie down on the ground. The suspect then ran east on 135th Street towards McKinley. Witness [redacted] said Suspect Berry ran approximately 80 feet passing McKinley and then turned around. The deputies continued to tell the suspect to get on the ground and Witness [redacted] heard the suspect repeatedly say "shoot me, shoot me mother fucker..."

Witness [redacted] said Suspect Wesley then ran towards the deputies and tried to hit one of the deputies. The deputy then knocked Suspect Berry to the ground.

Witness [redacted] said that Suspect Berry uses heroin and alcohol.

Witness [redacted] was present during this incident and gave a video-taped interview to the field sergeant on the night of the incident. Witness [redacted] participated in a telephonic interview with IAB Investigator and gave a recorded statement. This is a summary of Witness [redacted] statement. For his complete statement refer to the verbatim transcript, audio file, and video included in this investigation.

Witness [redacted] said he was standing outside Suspect Berry's residence when he saw Suspect Berry exit the location. When Suspect Berry exited the house the deputies approached the suspect and told him to stop and drop the bag he was carrying. Suspect Berry responded with, "Just shoot me... shoot me," and started running eastbound on 135th Street while laughing. Witness [redacted] saw the male deputy (Deputy Barrios) start running after Suspect Berry.

Witness [redacted] said Deputy Barrios chased the suspect eastbound on 135th Street past McKinley Avenue and almost out of site.

> **IAB Note:** **The distance from Suspect Berry's [redacted] to the east curb line of McKinley Avenue is approximately [redacted] feet (Determined by pacing, Refer to Exhibit B).**

The female deputy (Deputy [redacted] watched for a few seconds and then got into the police car and drove after the deputy and Suspect Berry. Witness [redacted] said Suspect Berry ran approximately 25 yards past (east of) McKinley Avenue, and then turned around and ran westbound. Witness [redacted] saw Deputy [redacted] in the police car on the left side of the roadway at an angle. He saw Deputy Barrios on the right side of the roadway. Witness [redacted] said that is when Suspect Berry turned around and began running westbound; he kept the radio car between himself and Deputy Barrios, running past the driver's side of the radio car while Deputy Barrios was on the passenger side. Witness [redacted] heard suspect Berry laughing and taunting the deputies while running.

The suspect then ran westbound to the northwest corner of 135th Street and McKinley Avenue, as Deputy Barrios chased him. Witness [redacted] said it looked like Suspect Berry stopped running because he was tired. The suspect turned to face east and Deputy Barrios grabbed him and tried to pull him down to the ground. Witness [redacted] saw Suspect Berry's hands up in front of him, but from his position Witness [redacted] could not tell if the suspect was trying to punch or push the deputy. It was very clear to Witness [redacted] that Suspect Berry was struggling with the deputy and not complying with any commands.

Deputy Barrios took the suspect to the ground and Suspect Berry tried to get back to his feet several times. Witness [redacted] saw Deputy Barrios use his flashlight and strike Suspect Berry at least two times in the shoulder and arm area. After a short time Deputy [redacted] arrived and handcuffed the suspect.

Witness [redacted] stated that the deputies kept their composure and used restraint in dealing with Suspect Berry; because he kept telling the deputies, "Shoot me," and they did not.

INJURIES:
Suspect Berry was treated at Harbor UCLA Medical Center for a fractured forearm. He was also held for a 72 hour mental evaluation under Welfare and Institution code 5150. After undergoing the 72 hour evaluation, Suspect Berry was given an "Okay to Book."

PHYSICAL EVIDENCE:
None.

INVESTIGATOR'S OBSERVATIONS:
The Force and Shooting Response Team did not respond to this location at the time of the incident due to a delayed notification.

WEAPONS USED BY DEPUTY PERSONNEL:
Deputy Barrios: Impact Weapon/Flashlight, Oleoresin Capsicum Spray

WEAPONS USED BY SUSPECT:
Personal Weapons-Hands

PROPERTY DAMAGE:
None

CRIMINAL INVESTIGATOR and CHARGES FILED:
Investigator: White, Daniel #[redacted] submitted the criminal case to the District Attorney's Office for criminal filing. Two counts of 422 PC and one count of 69 PC were filed against Suspect Berry under case number TA 109595.

LIGHTING AND WEATHER CONDITIONS:
It was dark, with poor street lighting. The weather was cool and dry (approximately 2015 hours).

SCENE DESCRIPTION:
The location (135th Street at McKinley Avenue) is a residential area consisting of single family residences. 135th Street runs east/west and McKinley Avenue runs north/south. Both streets have a single lane of traffic in each direction, and are asphalt paved with

raised cement sidewalks.

INVOLVED AND WITNESS DEPUTY STATEMENTS:

This is a summary based on statements given during recorded interviews by the involved deputies, witnessing deputies and suspect. For complete and detailed statements refer to the digital audio files and the verbatim transcripts, which are included in this investigation.

Deputy **Oscar Barrios** was interviewed on March 17, 2010 (Wednesday). This interview was audio recorded and the verbatim transcript is included in this investigation. Deputy Barrios wrote a supplemental report regarding this incident **[Exhibit A]**, in which he described his actions and observations regarding the use-of-force. For his detailed and complete statement refer to the verbatim transcript in this case book and the digital audio file.

Deputy Barrios said that he and Deputy [redacted] were standing across the street from the suspect's residence when he saw Suspect Berry exit the front door and begin walking in their direction. Deputy Barrios saw that the suspect's hands were inside his jacket pockets, and Deputy Barrios feared the suspect may have been armed. Deputy Barrios perceived the suspect's actions as aggressive; therefore he gave Suspect Berry verbal commands to remove his hands from his pocket and to lie on the ground.

Suspect Berry ignored these commands and began walking eastbound on 135th Street while telling the deputies, "Why don't you guys just fucking kill me already!" Deputy Barrios said the suspect then began running eastbound on 135th Street towards McKinley Avenue. The suspect ran in a looping path; running eastbound, making a large "U" turning movement and running back westbound.

Deputy Barrios said he moved to the northeast corner of McKinley Avenue and 135th Street staying approximately 10 yards behind the suspect. Deputy [redacted] got in their radio car and began driving the vehicle in the suspect's direction. As the suspect began his looping motion, Deputy Barrios said he paralleled him.

The suspect ran westbound toward Deputy Barrios' position and began trying to strike Deputy Barrios with his right fist. Deputy Barrios said that as the suspect approached him, he saw Suspect Berry remove his hands from his pockets. Deputy Barrios holstered his weapon and removed his flashlight from his right sap pocket. As the suspect attempted to strike him, Deputy Barrios stepped left and struck the suspect on the left arm and shoulder 3-4 times. Deputy Barrios said the flashlight strikes had some effect on the suspect, knocking him slightly off balance. However, the suspect continued to advance toward Deputy Barrios as the strikes did not stop his forward momentum. Deputy Barrios said he used his flashlight and struck Suspect Berry an additional 5-6 times on the left elbow and wrist. Suspect Berry fell to the ground, landing on his stomach, with his left arm underneath his torso.

Deputy Barrios used his body weight and pinned Suspect Berry to the ground while giving him verbal commands to remove his left hand from under his body. Deputy [redacted] arrived and was able to handcuff Suspect Berry's right arm. Suspect Berry would not release his left arm from under his body, so Deputy Barrios deployed a short burst of OC Spray onto Suspect Berry's face. The OC spray was effective and caused Suspect Berry to remove his arm from under his body, and he was handcuffed.

Deputy Barrios stated that during the altercation he was unable to put out radio traffic due to his involvement in the fight. The fight happened suddenly and he did not feel it would be safe to disengage from the suspect and attempt to put out radio traffic. Deputy stated that during this incident he paralleled the suspect in order to maintain a visual on Suspect Berry. Deputy Barrios does not believe that he was in foot pursuit.

Deputy [redacted] was interviewed on March 10, 2010 (Wednesday). This interview was audio recorded and the verbatim transcript is included in this investigation. Witness [redacted] wrote an Incident Report describing her actions and observations during this incident **[Exhibit A]**. This is a summary of Deputy [redacted] interview. For Deputy [redacted] complete and detailed statement refer to the verbatim transcript in this case book and the digital audio file.

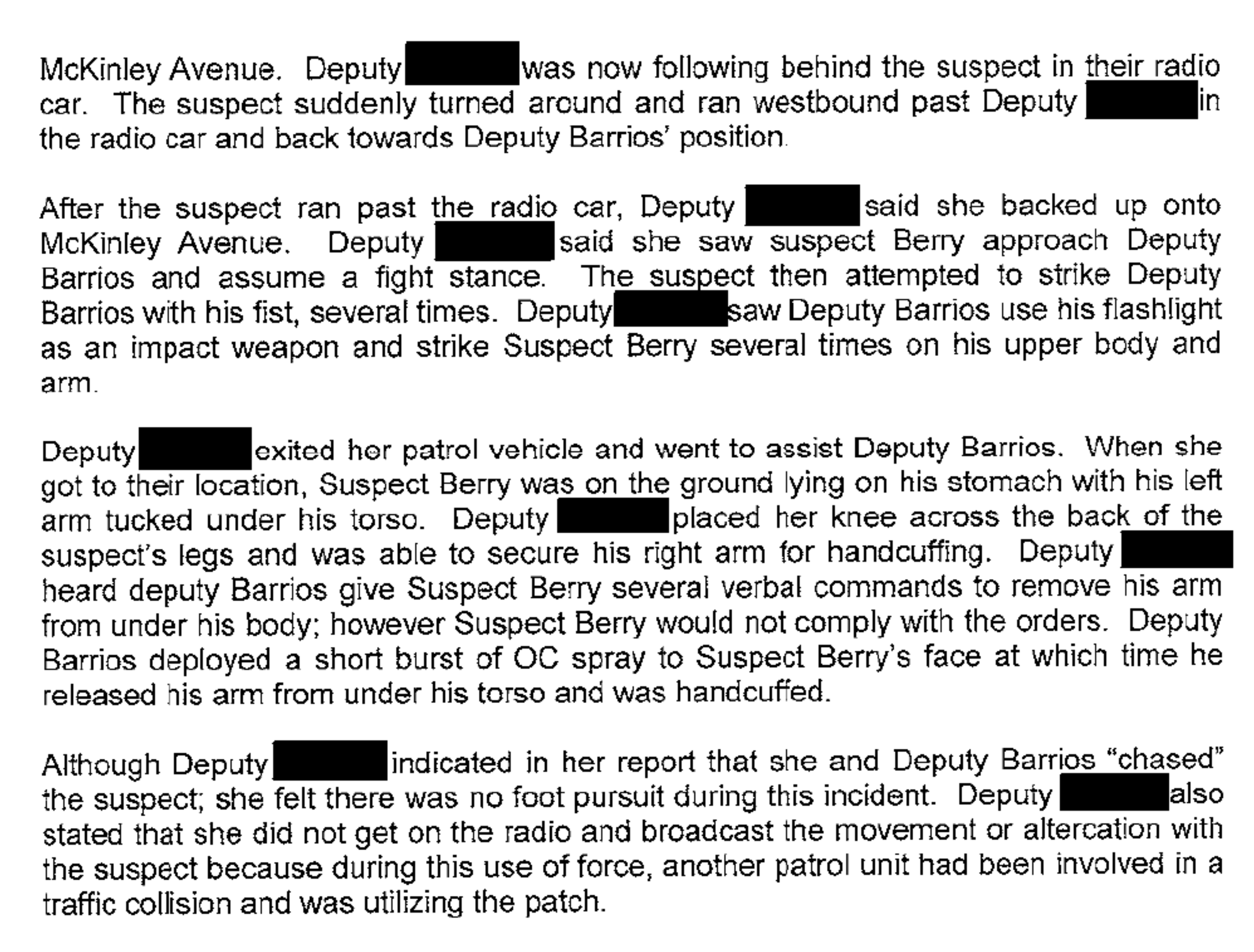
Deputies [redacted] and Barrios were standing on 135th Street along the south curb and slightly west of Suspect Berry's residence, waiting for an assisting unit, so they could contact the suspect. Suspect Berry exited his residence and began walking north, towards the street with both of his hands inside his jacket pockets.

Both deputies immediately gave the suspect verbal commands to remove his hands from his pockets and come to their location. Deputy [redacted] said Suspect Berry ignored their commands and made comments like, "...just kill me now." Deputies [redacted] and Barrios began following Suspect Berry as he began walking east on 135th Street towards McKinley Avenue. The deputies gave Suspect Berry several verbal commands all of which he ignored.

Deputy [redacted] stated that the victims and witnesses of Suspect Berry's criminal threats were standing across the street watching this contact. Deputy [redacted] said she was concerned that the suspect would move towards the victim and witnesses, so she returned to their patrol car, which was parked along the south curb line, just west of Suspect Berry's residence. Deputy [redacted] said she intended to use the vehicle as a barrier between the suspect and the victims.

IAB Note: **See diagram in Exhibit D. Deputy [redacted] placed the radio car along the north curb of 135th Street. Deputy Barrios had placed the radio car along the south curb of 135th Street.**

After walking a short distance the suspect began running eastbound and crossed



McKinley Avenue. Deputy [redacted] was now following behind the suspect in their radio car. The suspect suddenly turned around and ran westbound past Deputy [redacted] in the radio car and back towards Deputy Barrios' position.

After the suspect ran past the radio car, Deputy [redacted] said she backed up onto McKinley Avenue. Deputy [redacted] said she saw suspect Berry approach Deputy Barrios and assume a fight stance. The suspect then attempted to strike Deputy Barrios with his fist, several times. Deputy [redacted] saw Deputy Barrios use his flashlight as an impact weapon and strike Suspect Berry several times on his upper body and arm.

Deputy [redacted] exited her patrol vehicle and went to assist Deputy Barrios. When she got to their location, Suspect Berry was on the ground lying on his stomach with his left arm tucked under his torso. Deputy [redacted] placed her knee across the back of the suspect's legs and was able to secure his right arm for handcuffing. Deputy [redacted] heard deputy Barrios give Suspect Berry several verbal commands to remove his arm from under his body; however Suspect Berry would not comply with the orders. Deputy Barrios deployed a short burst of OC spray to Suspect Berry's face at which time he released his arm from under his torso and was handcuffed.

Although Deputy [redacted] indicated in her report that she and Deputy Barrios "chased" the suspect; she felt there was no foot pursuit during this incident. Deputy [redacted] also stated that she did not get on the radio and broadcast the movement or altercation with the suspect because during this use of force, another patrol unit had been involved in a traffic collision and was utilizing the patch.

IAB Note: Century Station Operations personnel confirmed that on 11/26/09 at approximately 2010 hours, two deputies were involved in a serious traffic collision.

Suspect **Wesley Berry** was interviewed on April 27, 2009 (Friday), by the Century Station on-duty Watch Commander. This interview was video recorded and the following is a summary of Suspect Berry's interview. For his complete and detailed statement refer to the video in this case book.

Suspect Berry said he was leaving his residence after an argument with his [redacted] When Suspect Berry left his residence he had his bag on his shoulder and his hands were down at his sides. Suspect Berry saw the deputies and he heard their commands telling him to put his hands up. Suspect Berry said the deputies told him that if he did not put his hands up they were going to shoot him, and he replied to the deputies, "Go ahead shoot me." The suspect said that he did not want to go anywhere with the police, so when the deputies approached to talk to him, he left. Suspect Berry said "I just left; I just took off down the road... I took off running."

After running one direction Suspect Berry said he turned around and ran back in the

opposite direction. Suspect Berry said the incident was rather "comic."

Suspect Berry said that he did not attempt to strike or push either of the deputies. Suspect Berry said that Deputy Barrios struck him several times with a flashlight on the left arm, back, and left shoulder. Once on the ground Suspect Berry was lying on his stomach and his left arm was under his body. Suspect Berry stated that he could not get his arm from underneath his body, possibly because of the weight of the deputy on his back.

After he released his arm, Suspect Berry said he was sprayed in the face with OC Spray, by Deputy Barrios.

Suspect Berry added that he had consumed two "big beers... 24 ouncers" prior to this incident.

Suspect Berry stated that in the past he has attempted suicide, two times, has been held for a 72-hour observation, two times, and has also been on prescription medication for depression.